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09/682,176	07/31/2001	Christine L. Corriveau	112703-183	9018
29156	7590	02/04/2005	EXAMINER	
BELL, BOYD & LLOYD LLC			CORBIN, ARTHUR L	
P. O. BOX 1135				
CHICAGO, IL 60690-1135			ART UNIT	PAPER NUMBER
			1761	

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 09/682,176

Filing Date: July 31, 2001

Appellant(s): CORRIVEAU ET AL.

For Appellant

EXAMINER'S ANSWER

MAILED
FEB 04 2005
GROUP 1700

This is in response to the appeal brief filed November 12, 2004.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is incorrect.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is correct.

(8) ClaimsAppealed

A substantially correct copy of appealed claims 1-26 appears on pages 10-13 of the Appendix to the appellant's brief. The minor errors are as follows: In claim 1, line 2, and claim 15, line 4, "rectangular shaped" has been deleted by the January 23, 2004 amendment. In claim 12, line 1, "rectangular" has been deleted by the January 23, 2004 amendment.

(9) Prior Art of Record

The following is a listing of the prior art of record relied upon in the rejection of claims under appeal.

4,753,805	Cherukuri et al	June 1988
5,318,784	Ream et al	June 1994
6,322,828	Athanikar et al	November 2001

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-7, 9-15, 17, 18 and 21-26 stand rejected under 35 U.S.C. 103(a) as being obvious over Cherukuri et al (column 3, lines 4-16; column 4, lines 12-18 and 49-68; column 5, lines 1-10; column 6, lines 14-22; column 7, lines 45-66; column 8, lines 25-30 and column 9, lines 1-5 and 30-50). Cherukuri et al discloses preparing a tableted chewing gum including gum particles of 4 mesh (about 6mm) and composed of about 50% gum base and about 50% powdered sweetener; and adding 2% magnesium stearate lubricant, a colorant, about 5% dry powdered active agent and about 3% powdered flavoring, and then forming into a tablet by compressing the components. A powdered active agent or flavoring as used in Cherukuri et al includes particles smaller than the 6 mm gum particles used therein and is thus equivalent to appellant's tableting media. A non-homogeneous distribution of gum component and tableting media is obviously present in the gum of the Cherukuri et al since the tableting media (flavoring or active agent) particles are of a smaller size than the gum particles in Cherukuri et al, which gum particles are of the same size as appellant's gum chips (see page 6 of appellant's spec.).

Although Cherukuri et al does not specifically use the term "gum chips", the gum particles or granules in Cherukuri et al are equivalent to appellant's gum chips especially since Cherukuri et al's gum particles are of the same size as claimed for appellant's gum chips (claim 13). Finding the optimum amount of gum component and tableting media (claims 4-6, 14, 24 and 25) would require nothing more than routine experimentation by one reasonably skilled in this art.

Claims 8, 16, 19 and 20 stand rejected under 35 U.S.C. 103(a) as being obvious over Cherukuri et al in view of Ream et al. It would have been obvious to chill or cool the chewing gum before chipping into gum particles, as evidenced by Ream et al (column 3, lines 53-63). Further, it would have been obvious to prepare the chewing gum product in Cherukuri et al so that the colorant therein brings the color of the sweetener close to the color of the gum particles or so that the color of the sweetener contrasts with the color of the gum particles (claims 8, 19 and 20) since it is well known to add a colorant to a chewing gum composition to achieve either of these objectives, as evidenced by Ream et al (column 5, lines 28-34).

Claims 1-26 also stand rejected under 35 U.S.C. 103(a) as being obvious over Ream et al in view of Cherukuri et al or Athanikar et al. Ream et al discloses preparation of a chewing gum composition by cooling a chewing gum sheet and forming gum chips therefrom having a size of 0.5 to 6 mm. The gum chips are mixed with powdered sweetener, e.g. dextrose, so that about 50% of each is present (column 6, lines 5-15). A colorant is added so that the color of the sweetener is close to or different from the color of the gum chips. Additionally, 7% magnesium stearate is included in the gum product. It would have been obvious to compress the gum composition in Ream et al into a tablet since it is old to prepare a chewing gum tablet from a chewing gum composition including particles and sweetener, as evidenced by Cherukuri et al (column 3, lines 7-16) or Athanikar et al (column 3, lines 10-25 and column 4, lines 25-28). Finding the optimum amount of gum component and tableting media (claims 6 and 15) would require nothing more than routine experimentation by one reasonably skilled in

this art. A non-homogeneous distribution of gum component and tableting media (powdered sweetener) is obviously present in the gum of Ream et al since the tableting media particles (powdered sweetener) are of a smaller size than the gum particles, which are of the same size as appellant's gum chips (see page 6, 2d full paragraph of appellant's spec.).

(11) Response to Argument

Appellant's comment that the references lack rectangular shaped gum chips is without merit since the shape of the gum chip is no longer a limitation claimed by appellant, as set forth in the January 23, 2004 amendment.

Appellant's contention, that the powdered sweeteners in Cherukuri et al are included in the gum formulations prior to grinding, is not convincing since the powdered flavoring or powdered active agent in Cherukuri et al is added to the other gum components after they have been subjected to grinding. See Examples III and V in Cherukuri et al. It is these powdered additives which are equivalent to appellant's tableting media. Appellant's non-homogeneous distribution is due to the difference in particle size between appellant's gum chips and tableting media (page 7, last 2 lines of spec.). Since Cherukuri et al's powder is obviously smaller in particle size than the gum granules used therein, Cherukuri et al also obviously achieves a tableted gum having a non-homogeneous distribution of gum granules and powder. Nowhere does Cherukuri et al state that a non-homogeneous distribution is desired, as appellant contends. Appellant's contention is a mere conclusion unsupported by any factual evidence of record. Avoiding segregation of particles during tableting, as Cherukuri et al desires

(column 4, lines 12-17) is not contrary to achieving a non-homogeneous particle distribution.

Appellant's argument that Ream et al teaches against the formation of tablets is also not convincing. Ream et al's gum composition is a dry, free-flowing formulation (column 6, lines 29-30), which is just the type of composition that can be readily tableted. Thus, Ream et al is properly combinable with either secondary reference to provide a tableted chewing gum composition.

Respectfully submitted,

Arthur L. Corbin
February 1, 2005


Glenn Calderola
Supervisory Patent Examiner
Technology Center 1700


ARTHUR L. CORBIN
PRIMARY EXAMINER
2-1-05

Conferees
Milton Cano
Glen Calderole

BELL, BOYD & LLOYD LLC
P. O. BOX 1135
CHICAGO, IL 60690-1135


MILTON I. CANO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700

1. Any inquiry concerning this communication from the examiner should be directed to Arthur L. Corbin whose telephone number is (571) 272-1399. The examiner can generally be reached on Monday--Friday from 10:30 to 8:00 p.m..

Art Unit: 1734

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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A.L. Corbin/dh
January 6, 2005